

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14183 of the Trust of Margaret D. Weaver, et al., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to modify Condition Nos. 1, 8 and 9 of BZA Order No. 14092 dated May 11, 1984, regarding the period of approval, Sunday hours of operation and deliveries, in an R-2 District at the premises 3831 McKinley Street, N.W., (Square 1860, Lots 5, 6, 7, 17, and 18).

HEARING DATE: September 26, 1984

DECISION DATE: October 3, 1984

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of the intersection of McKinley and 39th Streets, N.W. It is in an R-2 zone district at premises known as 3831 McKinley Street, N.W.

2. The property is used as accessory parking for Magruder's food store located at 5262 Connecticut Avenue, N.W., at the front of the parking lot. The lot is reasonably necessary to the operation of the food store.

3. In BZA Order No. 14092, dated May 11, 1984, the Board approved the continued use of the parking lot subject to fifteen conditions. The conditions were as follows:

1. Approval shall be for a period of TWO YEARS from the date of expiration of the previous approval, namely from June 27, 1983.
2. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.
3. The parking attendant shall assist in the movement of traffic from McKinley Street into the parking lot, and shall coordinate with enforcement agencies regarding the traffic regulations existing on McKinley Street.
4. Parking on the subject lot shall be exclusively

for patrons of Magruder's supermarket. A sign indicating such restriction shall be posted on the lot.

5. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and shall include removal of debris from the alleys and areas immediately adjacent to the lot. Such policing shall occur at least twice a day.
6. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.
7. No discharges from store operations shall be flushed into the alley or the street.
8. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation of the lot shall not exceed from 7:00 A.M. to 9:00 P.M., Monday through Saturday, and from 10:00 A.M. to 4:00 P.M. on Sunday.
9. No truck deliveries to the store shall occur from the lot. All vendors shall be instructed that no horn blowing is allowed at any time. Store personnel should be signalled through alternative mean provided by Magruder's.
10. Existing gaps in shrubs or landscaping shall be in-filled or repaired promptly and as needed. Beds shall be mulched twice a year. Grass areas shall be seeded and mowed. Leaves shall be raked as needed. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. The plantings along 39th and McKinley Streets shall be as dense as possible. Landscaping plans shall be approved by the D.C. DOT.
11. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
12. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
13. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

14. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
15. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

4. Counsel for the applicant, by motion filed May 24, 1984, requested the Board to modify three of the fifteen conditions enumerated in that Order or reconsider, rehear or allow reargument of the case as it relates to Condition Nos. 1, 8 and 9. In BZA Order No. 14092, dated July 24, 1984, the Board modified Condition No. 1 to extend the approval of the parking lot to June 27, 1983. The Board let stand Condition Nos. 8 and 9.

5. The two Orders of the Board in Case No. 14092, referred to above, are incorporated herein and made a part of this Order No. 14183.

6. The subject application seeks modification of Condition Nos. 1, 8 and 9. The applicant specifically requests that the Board grant approval of the parking lot for a five year period, that it modify the restriction on Sunday parking, and that it delete the restriction allowing no truck deliveries from the subject lot.

7. On May 27, 1984, a fire substantially destroyed the Magruder's food store. In order for Magruder's to reopen the store, it must remodel and to some extent reconstruct the entire interior of the food store. The remodeling and reconstruction cost will exceed \$700,000. Magruder's has consulted with its lender and has been advised that the store should have parking for its customers for at least a period of five years. Additionally, during the reconstruction phase, Magruder's intends to construct a loading elevator at the rear of the store so as to facilitate deliveries to the store from the rear.

8. The applicant argued that the restriction on hours of operation of the lot on Sunday from 10:00 A.M. to 4:00 P.M. creates a hardship. The surrounding competition, including a Safeway store directly across from the Magruder's store, operates on Sunday from 9:00 A.M. to 6:00 P.M. The applicant requested that Sunday hours be from 8:00 A.M. to 10:00 P.M. This would afford the employees time to find a place to park. The extended evening hours would enable the store to use the lot to take deliveries. Most customers would be off the parking lot by 6:00 P.M.

9. The applicant argued that Condition No. 9, regarding truck deliveries, creates an unusual hardship. There is "No Standing" on Connecticut Avenue from 7:00 A.M. to 9:00 A.M. No delivery truck could park and unload in front of the store during these hours. If deliveries from the lot are not allowed, the parking restriction on Connecticut Avenue precludes any deliveries to the store between these hours. There are deliveries six days a week. The earliest delivery is at 6:00 A.M. Deliveries from Connecticut Avenue after 10:00 A.M. create other problems. Trucks parked in front of the store on Connecticut Avenue block the front entrance to the store. The trucks have to maneuver around a cross-walk area. Hand trucks used to unload impede pedestrians on the sidewalk. In summary, the trucks blocking the front of the store, persons using the sidewalk, persons crossing in the cross-walk and the hand trucks criss-crossing the sidewalk together create an unsatisfactory situation on a busy thoroughfare.

10. Trash removal now occurs three times a week. The trash truck must traverse the parking lot to get at the trash compactor. Unloading can only occur from the parking lot.

11. The Chevy Chase Citizens Association (CCCA), by letter dated July 11, 1984, advised the BZA that it had no objection to granting a five year period to the applicant in view of the expenditures to be spent by the applicant and provided the applicant conforms to the other conditions of the Board's Order. The CCCA was also of the opinion that the hours of operation should be from 6:45 A.M. to 10:00 P.M., Monday through Saturday, and from 8:45 A.M. to 6:00 P.M. on Sunday. Further, the CCCA preferred that the maximum amount of deliveries be made from Connecticut Avenue but was amenable to deliveries from the lot by trucks backing into the new elevator during the hours the lot was in use. Finally, the CCCA was of the opinion that the trash dumpster must be emptied only during the hours the lot was permitted to be open.

12. Advisory Neighborhood Commission 3G, by letter of November 17, 1984, and at the public hearing, recommended as follows:

- A. To allow the use of the Magruder's parking lot to be traversed by a Dempsey Dumpster when hauling away trash from the rear of the store.
- B. To provide for the loading and unloading to the rear of the store, provided that no such loading and unloading occur between the hours 10:00 P.M. and 7:00 A.M.
- C. To extend the zoning special exception on this

parking space from two years to five years provided that Magruder's enters into a Memorandum of Understanding (MOU) with ANC 3G that it will abide by the conditions as set by the BZA in its Order dated, May 11, 1984, and as any of these conditions might be amended by the BZA. Critical elements of this MOU are that Magruder's will fully participate in a standing task force designed to implement this MOU, and that, as appropriate, ANC 3G shall hold a public meeting in which progress on this MOU will be discussed and reviewed for possible changes.

13. It was the opinion of the ANC that the first recommendation was necessary to clarify Condition No.4 which reserved use of the parking lot exclusively to the patrons of the supermarket.

14. As to its second recommendation, the ANC was further of the opinion that since the fire, Magruder's has decided that now is the time for a major remodelling. This would include the use of an elevator from truck level to underground storage through the aid of pallets. This would require some use of the alley as well as the parking lot. However, the time of unloading and loading would be reduced over present operations as the "hand cart" unloading method is abandoned. The ANC reported that, in its original review of January 25, 1984, as transmitted to the BZA, the ANC recommended loading and unloading operations off of Connecticut Avenue during the very late evening hours. However, the ANC never recommended that significant unloading be done off of Connecticut Avenue during day light and early evening hours. Further, the ANC also realized in its original review that some loading and unloading operations from the rear of the store was necessary. Now, with the introduction of the pallet and elevator, more unloading can be accomplished from the rear of the store between 7:00 A.M. and 10:00 P.M.

15. As to the third recommendation, the ANC was of the opinion that the ANC and neighborhood residents can accomplish the same thing with a five year special exception as with a two year special exception, provided that Magruder's and the ANC sign a mutually satisfactory Memorandum of Understanding. Further, the relatively large investment by Magruder's in remodelling requires legal assurances that the parking lot will be in existence beyond the two year period.

16. The Board concurs in general with the recommendations of the ANC and the CCCA. The Board will in substance so condition the granting of the subject application. The Board advises that it has no jurisdiction over any Memorandum of Understanding contemplated by the parties regardless of how beneficial it may prove to be.

17. The opposition filed in the record by an individual property owner was withdrawn on the basis that the Memorandum of Understanding heretofore mentioned would come into effect.

18. A petition bearing seventy-seven signatures in favor of the application was submitted to the record. The signers acknowledged that they live in the neighborhood and shop at Magruder's food store.

CONCLUSIONS OF LAW AND OPINION:

The Board is of the opinion that the request for modification of Condition Nos, 1, 8 and 9 is reasonable. The Board is also of the opinion that Condition No. 4 should be modified to discourage employees on Sunday from using neighboring streets. The Board notes the strong support for these modifications from the ANC and the Chevy Chase Citizens Association. The Board concludes that the granting of the modifications is in harmony with the intent and purpose of the zone plan and will not tend to affect adversely the use of neighboring property. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that Conditions No. 1, 4, 8 and 9 of the prior orders in BZA Application No. 14092 are modified and that the parking lot be approved subject to the following conditions:

1. Approval shall be for a period terminating on June 27, 1988.
2. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.
3. The parking attendant shall assist in the movement of traffic from McKinley Street into the parking lot and shall coordinate with enforcement agencies regarding the traffic regulations existing on McKinley Street.
4. Parking on the subject lot shall be exclusively for patrons of Magruder's supermarket, except that on Sundays only five spaces shall be reserved for employees of Magruder's. A sign indicating such restriction shall be posted on the lot.
5. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and the removal of debris from the alleys and areas immediately

adjacent to the lot. Such policing shall occur at least twice a day.

6. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.
7. No discharges from store operations shall be flushed into the alley or the street.
8. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation of the parking lot shall not exceed from 7:00 A.M. to 10:00 P.M. Monday through Saturday, and from 8:30 A.M. to 9:00 P.M. on Sunday.
9. Such deliveries to the supermarket which occur from the lot shall be limited to the hours from 7:00 A.M. to 9:00 P.M., Monday through Saturday, and from 10:00 A.M. to 9:00 P.M. on Sunday. All vendors shall be instructed that no horn blowing is allowed at any time. Store personnel should be signalled through alternative means provided by Magruder's.
10. Existing gaps in shrubs or landscaping shall be in-filled or repaired promptly and as needed. Beds shall be mulched twice a year. Grass areas shall be seeded and mowed. Leaves shall be raked as needed. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. The plantings along 39th and McKinley Streets shall be as dense as possible. Landscaping plans shall be approved by the D.C. Department of Public Works.
11. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
12. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
13. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
14. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such or structure is otherwise permitted in the zoning district in which the parking lot is located.

16. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Douglas J. Patton, Maybelle T. Bennett, William F. McIntosh and Carrie L. Thornhill to grant, Charles R. Norris not voting; not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

23 NOV 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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